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Paper No. 8

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In re Application of
Quackenbush, et al.
Application No. 09/942,954
Filed: August 31, 2001
Atty. Dkt. No. 424712000100
Title: SYSTEM AND METHOD FOR
ONLINE VALUATION AND ANALYSIS

This is in response to the petition under 37 CFR 1.47(a),
filed May 2, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing Inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed August 31, 2001 without an executed oath or declaration and naming Chris Quackenbush, Derek Szot, Brian Pietrwicz, and William Pappas as joint inventors. Accordingly, on October 2, 2001, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an executed oath or declaration and surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks items (1), (2), and (4) set forth above.

As to item (1), the petition lacks sufficient evidence that the legal representative of the deceased inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration.

The declaration of Kevin R. Spivak indicates that inventor Chris Quackenbush is deceased. Declarant further states that the United States Trust Company of New York and James J.

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OFFICE OF PETITIONS

DECISION REFUSING
STATUS UNDER 37 CFR
1.47(a)

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Dunne, III are the executors of the estate of the deceased inventor. Declarant further states G. William Haas is the legal representative of the executors of the estate of the deceased inventor.

While petitioner indicates an assignment and declaration were sent to legal representative G. William Haas, there is no indication that the legal representative received a complete copy of the application papers (specification, claims, drawings, and oath or declaration).

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. See, 37 CFR 1.42. However, petitioner is advised that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that *bona fide* effort has been made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the legal representative of the deceased inventor. A copy of the application papers should be sent to the last known address of the legal representative of the deceased inventor, or, if the legal representative is represented by counsel, to the address of the legal representative's attorney. See, MPEP 409.03(d).

Any renewed petition must be supported by evidence that the legal representative of the deceased inventor was presented with a copy of the application papers. In particular, the renewed petition should set forth the manner in which the application papers were presented to the legal representative of the deceased inventor. Petitioner may wish to provide the Office with copies of dated cover letters and, if available, copies of mailing receipts as evidence that the legal representative of the deceased inventor was presented with a copy of the application papers. If, after having been presented with the application papers, an oral refusal is made by the legal representative of the deceased inventor, this fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusal was made. Any written refusal to execute the oath or declaration by the legal representative of the deceased inventor should likewise be submitted. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.

As to item (2), the declaration submitted herewith is unacceptable as it fails to comply with 37 CFR 1.63 and 1.64 has been presented. Specifically, the declaration fails to set forth the name, citizenship, address, and residence of the legal representative of the deceased inventor. While the declaration of Kevin R. Spivak indicates G. William Haas is the legal representative of the executors of the estate of the deceased inventor, G. William Haas is not so identified on the declaration submitted with the instant petition. Any renewed petition must be accompanied by a declaration executed by each available inventor and properly identifying the legal representative of the deceased inventor in

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accordance with 37 CFR 1.63 and 1.64.

As to item (4), the petition fails to set forth the last known address of the legal representative of the deceased inventor. Any renewed petition must set forth the name and last known mailing address of the legal representative of the deceased inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.



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for Patent Examination Policy